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1 A Well, he volunteered the information that there were a
2 lot of good Russian restaurants in Brooklyn, and then he
3 proceeded to give me the recipe for beet soup.

4 Q Were you able to -- was that interaction relevant to
5 your assessment of Mr. Bumagin?

6 A Well, it showed me that he had pretty good memory at
7 least for some -- good, long-term memory.

8 THE COURT: What did he tell you about the recipe
9 for beet soup, what did you do remember about that other
10 than beets?

11 THE WITNESS: Beets and water. He told me it
12 was --

13 THE COURT: Other than beets and water.

14 THE WITNESS: I can't remember the exact
15 ingredients.

16 THE COURT: Well how about generally.

17 THE WITNESS: I can't remember them, but he could.
18 He said they were just amazingly very few ingredients and it
19 tasted so good and I needed to try it.

20 THE COURT: What did he tell you about beet soup
21 other than beets and water?

22 THE WITNESS: My memory is not good for beet soup.

23 THE COURT: Okay. Next question about the beets
24 soup. Go ahead.

25 Q How did the defendant get along with other inmates in

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1 the facility?

2 A Very well.

3 MS. DOLAN: Objection. I think that --

4 THE COURT: Overruled.

5 MS. DOLAN: I'm going to object.

6 THE COURT: I'll take it for what it's worth.

7 Q Now, you spoke on direct examination about a conference
8 call you had or that you were a part of with the defendant,
9 his counsel and other doctors at the facility; is that
10 correct?

11 A Yes.

12 Q And can you describe how the defendant interacted with
13 his counsel in the course of that call; not the content of
14 the discussion, if you don't want, but just how he
15 interacted with the defense counsel?

16 A He listened attentively. I can't remember if he asked
17 very many questions or not, but I think he did. And he
18 appeared to pay attention and understand what was being
19 said.

20 Q Did the defendant report to you any issues that he had
21 in dealing with his attorney, any problems?

22 A He did not.

23 Q During the conference call, did he have any difficulty
24 communicating with his attorney?

25 A Not that I observed.

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1 Q Did he recall who she was during the call?

2 A Yes.

3 Q Now, during one of your interviews of the defendant,
4 did you ask him about the charges in his case?

5 A Yes.

6 Q Did you -- were you in the courtroom earlier when
7 Dr. Brauman testified?

8 A Yes.

9 Q Did you hear her testify that she also asked about the
10 charges in the case?

11 A Yes.

12 Q What question did you ask the defendant, if you recall?

13 A I asked him if he knew what he was charged with.

14 Q And how did he respond to that?

15 MS. DOLAN: Objection.

16 THE COURT: Did he respond?

17 THE WITNESS: He did.

18 THE COURT: What did he say? Overruled.

19 THE WITNESS: He said, possession of a gun.

20 Q Did you ask a follow-up question?

21 A I did.

22 Q What did you ask?

23 A I asked why would that be a criminal charge or why was
24 that wrong.

25 Q And how did he respond to that?

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1 A He said because he had a criminal --

2 MS. DOLAN: Objection.

3 THE COURT: Why did you ask him that question?

4 THE WITNESS: Because I was trying to determine if
5 he had a rational understanding.

6 THE COURT: I'm going to sustain the objection.
7 Ask another question.

8 Q Did there come a time when the defendant described to
9 you his view of the facts of the case?

10 A He did.

11 THE COURT: That answers that question.

12 MS. DOLAN: Yeah.

13 Q Did you specifically ask him about the facts of the
14 case?

15 A I did not.

16 THE COURT: Did you ask him generally about the
17 facts of the case?

18 THE WITNESS: I did not.

19 Q Other than asking him about the charges, did you ask
20 him at any point about the facts of the case?

21 A I did not.

22 Q The questions that you asked, are those consistent with
23 the professional literature on competency exams?

24 A Yes.

25 Q And do you routinely ask them in the course of your

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1 competency exams?

2 A Yes.

3 Q And restoration evaluations?

4 A Yes.

5 Q What is -- why do you ask that question about the

6 charges in the case?

7 A I don't believe I can come to an opinion about an
8 individual's competency if I don't know that they are aware
9 of the charge and why it may be a criminal charge.

10 Q At any time did you discuss with the government the
11 questions you were going to ask the defendant about the
12 charges in the case, did you consult with the prosecutors
13 about this discussion?

14 A No.

15 Q Did you did that before the discussion?

16 A No.

17 Q Did you do it after the discussion?

18 A I did not.

19 THE COURT: Did you have any concerns at all about
20 inquiring of the witness or the defendant about the facts of
21 the case? Did you have any concerns at all of inquiring of
22 the defendant about the facts of the case, not the charges
23 of the case, the facts of the case? Did you have any
24 concerns at all?

25 THE WITNESS: Yes.

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1 THE COURT: What concerns did you have about
2 discussing the facts of the case with the defendant?

3 THE WITNESS: Well, I had concerns about asking
4 him facts directly. I didn't feel like it was my place to
5 go into detail about that with him.

6 THE COURT: Putting aside directly versus
7 indirectly, directly versus elliptical, did you have any
8 reservations about discussing the facts of the case with
9 this defendant?

10 THE WITNESS: Yes.

11 THE COURT: What were your concerns about
12 discussing the facts of the case with this defendant;
13 directly or indirectly?

14 THE WITNESS: Well, my concerns would be that he
15 could provide information that would be somewhat damaging to
16 his defense or his attorney working him later to prepare a
17 defense.

18 THE COURT: And how did you guard against
19 eliciting such facts, since you were concerned about it?

20 THE WITNESS: I did not ask him about the facts of
21 the case.

22 THE COURT: How did you guard against him
23 volunteering such facts? Did you stop when he started to go
24 down a road that might elicit facts of the case by saying,
25 we're not going to go down that road, I'm asking you about

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1 charges, don't talk to me about the facts, or did you let
2 him volunteer to discuss the facts of the case?

3 THE WITNESS: I did not stop him.

4 THE COURT: You did not stop him. Did you realize
5 that he was discussing facts of the case at some point as
6 opposed to charges?

7 THE WITNESS: Yes.

8 THE COURT: Did you --

9 THE WITNESS: I understood that he was giving me
10 his version.

11 THE COURT: Did you understand at some point that
12 he was discussing the facts of his case with you beyond the
13 charge? Did you understand that, doctor?

14 THE WITNESS: I did.

15 THE COURT: And you continued to let him do that;
16 is that right?

17 THE WITNESS: Yes.

18 THE COURT: Okay. Go ahead.

19 BY MR. TROWEL:

20 Q Dr. Grant, did you -- were you in the room when
21 Dr. Brauman testified a few moments ago?

22 MS. DOLAN: Your Honor, if I could interrupt just
23 briefly. My expert, Dr. Rivera Mindt was planning on
24 leaving at 5:00, because she has a family issue to take care
25 of.

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1 THE COURT: Yes.

2 MS. DOLAN: I think that my direct of her could be
3 two or three minutes, and it's really only to admit the
4 report. I think we can do her right now, if the Court
5 wouldn't mind taking her out of order. I would just propose
6 that. Otherwise, she has to come back on CJA money. I'm
7 happy to call her tomorrow, but I think it's more
8 expeditious.

9 THE COURT: Do you object to taking this witness
10 for this limited purpose out of sequence so we can get her
11 on and off?

12 MR. TROWEL: I do, your Honor. I think we should
13 continue with Dr. Grant.

14 THE COURT: Okay. The objection is overruled.
15 Let's get the other person on and off.

16 You may step down for a minute, Doctor, and then
17 I'm going to give the other witness on and off in five
18 minutes.

19 MR. TROWEL: I also have a cross-examination of
20 the defendant's witness that may talk longer than two
21 minutes, your Honor.

22 THE COURT: Okay. We're going to get her on and
23 get her off when you're done. If you take five hours,
24 that's how it goes. I'm a Wall Street guy, I don't care,
25 let's get it done, okay?

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1 MS. DOLAN: Okay. Unfortunately, there won't be
2 time to do the cross.

3 THE COURT: Okay. Well then, let's get the
4 witness back on the stand.

5 MR. TROWEL: So we'll have to come back tomorrow.

6 THE COURT: You'll have to come back tomorrow,
7 sorry about that. Let's have the same doctor come back to
8 the stand. Doctor, you're still under oath. Please read
9 back the last question and the last answer.

10 (The last question was read back.)

11 THE COURT: Go ahead.

12 THE WITNESS: Yes.

13 BY MR. TROWEL:

14 Q Did you hear Dr. Brauman testify that on occasion
15 she'll ask a defendant about the facts of a case if she
16 thinks it's relevant to her analysis?

17 A Yes.

18 Q In what way was the defendant's answer to these
19 questions relevant to your analysis?

20 A Well, I did not ask him about the facts of the case.
21 But he provided his -- he provided me some information as he
22 saw it. And what it did was it helped me rule out if he had
23 a thought disorder that would preclude him from organizing
24 point A to point B. He appeared --

25 MS. DOLAN: Objection, because of the cross that

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1 this has to open up.

2 THE COURT: I'm going to overrule the objection.

3 Go ahead with the speech.

4 A He -- I'm trying to remember where I was. He -- it's
5 important for me to be able to reach an opinion about
6 someone's rational understanding in the case; and that means
7 being able to give events as they see them, to know that
8 they would have to develop an appropriate defense. Just,
9 I'm talking generally now, but all of those things are
10 important, because I have to see what their thought process
11 is like. If someone is delusional, if they have
12 disorganized thinking, that would all come out in that
13 discussion, and then it would really have a bearing on my
14 opinion about competency.

15 Q So what conclusion or what conclusions could you draw
16 from this particular discussion with the defendant?

17 A Mr. Bumagin was very organized in his discussion, and
18 he appeared to know that he would need a defense or a reason
19 for doing what he said he knew was wrong to do or against
20 the law.

21 MS. DOLAN: Objection.

22 THE COURT: Sustained. I'll strike it.

23 MR. TROWEL: On what basis, your Honor?

24 THE COURT: Oh, no, we're not doing this.

25 MR. TROWEL: I just -- we're just making a record.

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1 THE COURT: You got a record. You got a good
2 record. You'll be back. Maybe. Let's go.

3 Q Dr. Grant, you testified on direct that you had a
4 conversation with the defendant where he asked you if it was
5 better to be competent or incompetent; do you recall that?

6 A Yes.

7 Q What if anything -- why, if at all, was that
8 conversation relevant to your analysis?

9 A Well, it let me know that he understood there was a
10 difference between the two concepts, and he -- it led me to
11 believe that he was evaluating the different -- the status
12 of each in his own mind.

13 Q And why is that relevant?

14 A Because it tells me that he has a rational
15 understanding of what's going on and how things could
16 proceed in his case, depending on being found competent or
17 incompetent.

18 Q In the course of the evaluation, did you work with
19 other doctors?

20 A Yes.

21 Q What other doctors contributed to the evaluation?

22 A To this particular evaluation, our psychiatrist
23 Dr. Volin, our staff neuropsychologist Dr. Pennuto, and we
24 also considered information from a medical service.

25 Q Did Dr. Correa also contribute?

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1 A And Dr. Correa.

2 Q Did you consult -- Dr. Volin you mentioned, what was
3 her role, generally?

4 A She was our team psychiatrist.

5 Q And did you consult with her before reaching your
6 ultimate conclusion, your ultimate opinion in this case?

7 A Yes.

8 Q Did she disagree with your opinion?

9 A She did not.

10 Q What was your -- Dr. Pennuto's role?

11 A Dr. Pennuto is a staff neuropsychologist, and I
12 consulted with her to do some testing that she saw warranted
13 in this case.

14 Q And did she conduct the testing?

15 A She did. She did a battery of tests.

16 Q Did she convey the results to you?

17 A She did.

18 Q Did you consult with her before reaching your ultimate
19 opinion?

20 A I did.

21 Q Did she disagree with you?

22 A She did not.

23 Q Finally, Dr. Correa, what was her role?

24 A She also conducted some testing under the supervision
25 of Dr. Pennuto.

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1 Q And did you consult with Dr. Correa before reaching
2 your ultimate opinion?

3 A Yes.

4 Q Did she disagree with your ultimate opinion?

5 A She did not.

6 Q I'm just going to step back very briefly for one
7 moment, Dr. Grant. When you had a discussion with the
8 defendant about the charges that we spoke about a moment
9 ago, do you recall that discussion?

10 A Yes.

11 Q And you said that he gave you some facts or his view of
12 the facts in the case; is that correct?

13 A Yes.

14 Q And did you record that discussion in notes, the
15 substance of the discussion?

16 A Yes.

17 Q Showing you what has been admitted as Defense Exhibit 2
18 admitted into evidence, do you recall this document?

19 A Yes.

20 Q Okay. And you discussed this with defense counsel on
21 direct?

22 A Yes.

23 Q I'm turning to page three of the document.

24 I see that defense counsel has removed the final
25 page of the document. I apologize, your Honor. I'm showing

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1 you what's been marked --

2 MS. DOLAN: Objection to that characterization,
3 the document was complete.

4 THE COURT: I thought I saw three pages. Do you
5 not have three pages there, counsel?

6 MR. TROWEL: I do, your Honor.

7 MS. DOLAN: I'm just objecting to the
8 clarification. I did not remove any pages of the
9 questionnaire, I removed the notes.

10 THE COURT: Are the notes in evidence or not?

11 MS. DOLAN: No.

12 MR. TROWEL: They are not, your Honor.

13 THE COURT: All right. So you're objecting to the
14 mischaracterization of the notes as being in evidence?

15 MR. TROWEL: Withdrawn.

16 THE COURT: Because that would be an improper
17 characterization of what the evidence is, and that would be
18 something that would not be appropriate --

19 MR. TROWEL: I understand, your Honor.

20 THE COURT: -- in any, way, shape or form in any
21 record. So obviously, we're not going to talk about the
22 notes which are not in evidence and they're not going to
23 come into evidence, because they deal with the facts. So if
24 you're going to offer the page and not the notes, there will
25 be an objection, I'm going to sustain the objection. You're

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1 not going to get to question this witness about her notes,
2 because the notes talk about the facts and that's not coming
3 in, so can we move on.

4 MR. TROWEL: I understand, your Honor. I wasn't
5 going to offer them as evidence, I was going to make a
6 record.

7 BY MR. TROWEL:

8 Q Dr. Grant, are these your notes, page four of what's
9 been marked for identification as 3500-JG-03?

10 A Those are my notes.

11 Q Okay. Those are the notes of the discussion that you
12 had with the defendant wherein he discussed the facts of his
13 case with you; is that correct?

14 A That's correct.

15 Q Okay. And did you also incorporate that discussion
16 into your final report?

17 A Yes.

18 Q And that again is the report that was marked for
19 identification, but not admitted as Government Exhibit 1; is
20 that correct, your April 3rd report?

21 A Yes.

22 Q Now, we were talking a moment ago about the testing
23 that Dr. Pennuto and Correa conducted on the defendant. Do
24 you recall that discussion?

25 A Yes.

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1 Q Did they administer tests to determine whether the
2 defendant was providing adequate effort on those tests?

3 A Yes.

4 Q And what did they conclude, if anything, about his
5 effort?

6 A They concluded that his effort was either poor or
7 inconsistent at times.

8 Q What does that mean? Why is that relevant?

9 A He did not give good effort on some of the tests, and
10 it was in -- his effort was inconsistent. And it's relevant
11 because it means that we can't put false stock into the test
12 results.

13 Q Did you conduct tests of the defendant's effort
14 yourself?

15 A I did not.

16 Q In your analysis, did you determine that although
17 Mr. Bumagin may have some genuine symptoms of memory
18 deficits, his presentation of those deficits was likely
19 exaggerated?

20 A Yes.

21 Q And what was that based on that conclusion?

22 A It was based on the inconsistency in his report between
23 evaluators, different context and different times.

24 Q Can you expand on that a little bit?

25 A Yes. I believe I gave an example a few minutes ago

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1 where he said he forgot going to competency group, he didn't
2 know who the social worker was, but then later he identified
3 her by name in front of me, and before that time, described
4 her, she's small in stature and wears a uniform, and he was
5 able to describe her in detail, that's an example.

6 Q Why was that relevant?

7 A Well, because it was inconsistent, his report was
8 inconsistent.

9 Q And could that inconsistency have been evidence of a
10 deficit?

11 A It's possible, but we saw it across contexts and also
12 in the testing results.

13 Q And so what did that mean to you, if anything?

14 A That he did that routinely, would report something and
15 then report something else or say he had a problem and then
16 not follow-up with medical about it, for example.

17 Q And the fact that he did it routinely what, if
18 anything, did that indicate to you?

19 A That it was a pattern.

20 Q But why is the pattern significant?

21 A Well, it's significant because it's difficult to reach
22 a definite diagnosis for somebody or to know exactly what's
23 going on, they're not being completely honest or putting
24 forth good effort.

25 Q Can you describe for the Court where the defendant was

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1 housed during this evaluation?

2 A He was housed on an inpatient mental health unit.

3 Q Was he under observation during that period?

4 A He was.

5 Q By whom?

6 A By psychiatric nurses and correctional officers and
7 myself and other medical personnel, and I think that's it.
8 I think that's --

9 Q Is it fair to say at Butner, during his time at Butner
10 he was under it 24-hour observation?

11 A Yes.

12 Q Did you communicate with the nursing staff about their
13 observations of the defendant?

14 A I did.

15 Q How were their observations communicated to you?

16 A They were communicated by phone, in person and by
17 E-mail.

18 Q What information did you learn from nursing staff?

19 A I learned initially that he was having trouble finding
20 his cell, and I learned that from the custody staff as well.
21 And then I learned that he was getting along with other
22 inmates pretty well, they seem to like to interact with him
23 on the unit. He -- they also told me that he had several
24 different medical complaints, and that they were referring
25 him for sick call to see the physician and that to get

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1 follow up with different things.

2 Q How were those observations relevant to you, if at all?

3 A Well, they were relevant because I tried to consider
4 all the information coming in. I wanted know how he's doing
5 on a day-to-day basis, is he able to take care of his needs,
6 is he able to find the chow hall and get proper nourishment,
7 is he bathing himself and doing the things that we would
8 expect someone to be able to do intently.

9 Q Did you communicate with the security staff at Butner?

10 A I did.

11 Q And what -- how were their observations conveyed to
12 you?

13 A They talked to me in person when I was on the housing
14 unit, and they were the first ones who were concerned about
15 his inability to find his cell and they intervened.

16 Q And that was shortly after he was admitted; is that
17 right?

18 A Yes.

19 Q And after that you -- we spoke earlier about the
20 reindeer that was put on the door; is that right?

21 A Yes.

22 Q And after that, did he have any further trouble finding
23 his cell?

24 A No. I was told that he was doing well. He said he
25 goes to the rec yard often. The way the process is there,

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1 the inmates have to give their ID to get a pass to go off
2 the unit and he was taking full advantage of the opportunity
3 to move about and get outside.

4 Q You mentioned this earlier, did he have any trouble
5 finding the rec yard?

6 A He did not.

7 Q Or the chow hall, as you've referred to it?

8 A No.

9 Q You mentioned earlier that during the restoration
10 evaluation the defendant received -- there is a treatment
11 component as well, correct?

12 A Yes.

13 Q I think you mentioned that the defendant was enrolled
14 in a competency restoration class; is that right?

15 A Yes.

16 Q Did you speak to the Butner employee who was conducting
17 the class?

18 A Yes.

19 Q Do you recall what she told you about the defendant's
20 behavior in the class?

21 A Yes. She told me she didn't --

22 MS. DOLAN: Objection.

23 THE COURT: I'll allow it.

24 A Yes. She told me that he when he was called upon in
25 the group, he always provided the correct information.

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1 Sometimes he did not appear to pay attention very well and
2 was distracting, but most of the time he was cooperative.

3 Q Before you evaluated the defendant, had he been
4 evaluated by other psychologists?

5 A Yes.

6 Q And did you review their reports in the course of your
7 evaluation?

8 A Yes.

9 Q Did you recall -- did you review a report prepared by
10 Dr. Monica Mindt Rivera?

11 MS. DOLAN: Rivera Mindt.

12 MR. TROWEL: Rivera Mindt, I'm sorry.

13 A Yes. I reviewed that report briefly, and then I went
14 over it with our neuropsychologist.

15 Q And that -- when you say you went over it with a
16 neuropsychologist, do you mean contemporaneous with your
17 evaluation of Mr. Bumagin? So at the time of your
18 evaluation?

19 A Yes.

20 Q Do you recall what type of report Dr. Rivera Mindt
21 created?

22 A It was a neuropsychological evaluation.

23 Q What was her conclusion, if you recall?

24 A I don't believe she rendered an opinion about
25 competency, but she indicated that he had cognitive

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1 impairment, that he had a dementia, and that she didn't feel
2 that he would be able to return to work in the same
3 capacity.

4 Q Was Dr. Rivera Mindt's report -- did she conduct a
5 competency evaluation of the defendant?

6 A No.

7 Q And did she reach an opinion about his competency?

8 A No.

9 Q Did you review a report prepared by Dr. Dana Brauman
10 from the Metropolitan Correctional Center in Manhattan?

11 A Yes.

12 Q If you recall, what type of report did Dr. Brauman
13 create?

14 A That was a competency evaluation.

15 Q What, if you recall, was her conclusion?

16 A It was her opinion that he was not competent, but that
17 she felt he should be sent to a medical center for
18 competency restoration.

19 Q The report recommended a restoration evaluation; is
20 that right?

21 A Yes.

22 Q What differences -- did he then come to FMC Butner
23 following his evaluation by Dr. Brauman?

24 A Yes.

25 Q What differences, if any, were there between your

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1 evaluation and Dr. Brauman's evaluation?

2 A Well, our evaluation included a full neuropsychological
3 battery of test results. Our evaluation included a pretty
4 lengthy medical section. He had a pretty big medical workup
5 at our institution. My opinion was different than hers.
6 Our diagnoses were similar; although, we believed -- we gave
7 him a rule out dementia not otherwise specified, because we
8 couldn't determine the -- we couldn't rule it in or rule it
9 out, we didn't have enough information because test results
10 indicated it's inconsistent effort, and he wasn't -- we
11 didn't feel like he was being truthful with us.

12 Q So just to be clear, what does rule out mean?

13 A It means that we believe there is a cognitive decline,
14 we don't know how extent -- how extensive it is, simply
15 because he provided inconsistent information to us, and so
16 we weren't able to say definitively if he had dementia.

17 Q In the differences between your evaluation and
18 Dr. Brauman's, was your evaluation period longer?

19 A Yes, our evaluation period lasted four months.

20 Q And how long was Dr. Brauman's, if you recall?

21 A 30 days.

22 Q Was Mr. Bumagin subject to more observation in the
23 course of your evaluation?

24 A Yes.

25 Q By whom?

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1 A By the members of the nursing staff, medical staff,
2 custody staff, as well as the primary -- or the evaluators
3 in the case.

4 Q And were you in the room earlier when Dr. Brauman
5 testified that she conducted her evaluation of the defendant
6 alone?

7 A Yes.

8 Q And were you -- did you have other members of your
9 team --

10 A Yes.

11 Q -- in the course of your evaluation?

12 A Yes.

13 Q Now in your -- what was your diagnosis of the
14 defendant, if you recall?

15 A I believe our diagnosis was dementia or rule out
16 dementia NOS.

17 Q In your expert opinion, can a patient diagnosed with --
18 I'm sorry, withdrawn.

19 NOS, does that mean not otherwise specified?

20 A It does.

21 Q In your expert opinion, can a patient diagnosed with
22 rule out dementia not otherwise specified be found
23 competent?

24 A Yes.

25 Q In the course of your evaluation, do you ever consider

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1 prison calls?

2 A Yes.

3 Q Why do you do that?

4 A Sometimes we listen to telephone calls to -- it could
5 be for various reasons. To see if the person has a rational
6 thought process, to see what their relationship is like with
7 their family, are they telling their family something
8 different than they are telling us.

9 Q Did you do that in this case?

10 A I did not.

11 Q Why not?

12 A I didn't feel it was necessary to reach an opinion.

13 Q What do you mean by that?

14 A I didn't feel like I needed that additional source of
15 data.

16 Q And did you have -- you had enough data to reach your
17 conclusion, that what you're saying?

18 A Yes.

19 Q Now, in the course of your evaluation, were all the
20 questions that you asked part of a routine restoration
21 examination?

22 A Yes.

23 Q And was the purpose of each and every one of those
24 questions solely to determine his competency to stand
25 trial?

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1 A Yes.

2 Q Was there any other reason that you asked those
3 questions, any question of the defendant other than to
4 determine his competency to stand trial?

5 A We ask questions to be able to reach a diagnosis.

6 Q So you asked questions to reach a diagnosis and to
7 determine whether he was competent to stand trial; is that
8 correct?

9 A Yes.

10 Q Any other purpose for any other questions that you
11 asked?

12 A No.

13 Q Dr. Grant, I show you Defendant's Exhibit 3. Do you
14 recall discussing this a new moments ago?

15 A Yes.

16 Q What is this?

17 A The treatment plan.

18 Q When was this created?

19 A It was created at our first treatment team meeting, and
20 typically occurs within two weeks of an individual's arrival
21 at the institution. It looks like the date of this plan is
22 12/5.

23 Q Had you reached an opinion about the defendant's
24 competency at the time of this plan?

25 A No.

J. GRANT - CROSS/MR. TOWEL

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1 Q When did you reach an opinion about the defendant's
2 competency, if you recall?

3 A I reached an opinion very shortly before I wrote the
4 report.

5 Q Why do you recall that?

6 A Because we still had a lot of data to collect. We had
7 neuropsychological test results, I felt like I wanted to
8 interview him again and talk again with nursing staff.

9 Q In this plan on page two there is a heading that says,
10 problem one. Is that right?

11 A Yes.

12 Q And what is a problem in this report? What does
13 that --

14 MS. DOLAN: Your Honor, I asked that precise
15 question.

16 THE COURT: I know, maybe he didn't remember the
17 answer.

18 A It's an area that we are assessing, we're looking at or
19 working on.

20 Q So this is one of the issues that you're going to
21 evaluate in the course of your examination, correct?

22 A Yes.

23 Q And then on page three there are objectives listed; is
24 that correct?

25 A Yes.

J. GRANT - CROSS/MR. TOWEL

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1 Q Those are -- is it fair to say those are aspirational?

2 A Yes.

3 Q Is this what you hope to accomplish with the defendant?

4 A Yes.

5 Q These are not statements of your belief at the time of
6 this report; is that correct?

7 A That's correct.

8 Q Now, you discussed with defense counsel the defendant's
9 ability to explain the legal options and that that was one
10 of the things you hoped he would be able to do at the end of
11 the restoration period; is that correct?

12 A Yes.

13 Q And did you conclude that -- at a certain point did you
14 conclude that he was able to do that?

15 A Yes.

16 Q And when did you reach that conclusion?

17 A I can't recall exactly when I reached that conclusion.
18 They discussed that as a routine part of their competency
19 group, and I'm not sure exactly where that falls within the
20 course of their meetings.

21 Q Was it later in the evaluation period, later than --

22 A Yes.

23 Q -- later than the creation date of Defense Exhibit 3?

24 A Yes.

25 MR. TROWEL: One moment, your Honor, please?

J. GRANT - REDIRECT/MS. DOLAN

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1 Thank you.

2 THE COURT: Of course.

3 (Pause.)

4 BY MR. TROWEL:

5 Q Dr. Grant, in the course of your evaluations, have you
6 kept records about the percentage of defendants who you
7 concluded were competent?

8 MS. DOLAN: Objection, not relevant.

9 THE COURT: Sustained. She's not here as a
10 statistical witness.

11 MR. TROWEL: Nothing further, your Honor.

12 THE COURT: Thank you. Your witness.

13 REDIRECT EXAMINATION

14 BY MS. DOLAN:

15 Q Dr. Grant, Mr. Trowel was just asking you about the
16 treatment plan goals, correct?

17 A Yes.

18 Q And earlier throughout the course of your
19 cross-examination he discussed something known as a
20 restoration evaluation, correct?

21 A Yes.

22 Q Okay. And at one point either you or he said there was
23 a treatment component to a restoration evaluation, correct?

24 A Yes.

25 Q And is there?

J. GRANT - REDIRECT/MS. DOLAN

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1 A Yes.

2 Q Now, you were ordered by the court to evaluate
3 Mr. Bumagin, correct?

4 A Yes.

5 Q Was there anything in that order that directed you to
6 conduct a restoration evaluation?

7 A Yes. I believe the order referenced the federal
8 statute 4241(d).

9 Q And does 4241(d) discuss a restoration evaluation?

10 A Yes.

11 Q What does it say?

12 A It uses the language of treatment and evaluation
13 period. And, in fact, I included a statement about 4241(d)
14 in the initial paragraph of my report.

15 It's my understanding that it -- the language --

16 Q I'll ask the questions.

17 Looking at Defendant's Exhibit 3, does 4241(d) say
18 anything about clearly and realistically discussing the
19 evidence against a defendant and possible legal defense
20 strategies? Does it say anything about that?

21 A I don't believe so.

22 Q It only talks about a treatment and evaluation, does it
23 not?

24 A Correct.

25 Q Now, at one point you use the phrase, "appropriate

J. GRANT - REDIRECT/MS. DOLAN

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1 defense." Do you recall that?

2 A I don't.

3 Q You don't recall saying that?

4 A I don't. I could have said that, I don't recall my
5 exact words.

6 Q What --

7 A I think it's possible that I said that.

8 Q What is an appropriate defense?

9 A I think that would depend on the case, it would depend
10 on an individual consulting with their defense attorney,
11 it's variable, it's a case-by-case thing.

12 Q Do you have a legal education?

13 A No. No, I don't.

14 Q And so you've never represented an individual facing
15 criminal charges?

16 A No.

17 Q So what is your understanding of an appropriate defense
18 based on?

19 A It would be -- I don't know that I can make that
20 determination. But when I'm talking with an individual
21 about their thoughts about their case, I want to see if
22 their thinking process is rational. And if they, for
23 example, tell me that they were completely crazy or
24 psychotic at the time of the offense and all the evidence
25 points that that's not the case, because I have the

J. GRANT - REDIRECT/MS. DOLAN

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1 discovery in front of me, I would say that it's probably not
2 a rational or an appropriate defense if they believe they
3 can plead not guilty by reason of insanity, for example.

4 Q Have you ever read any cases?

5 A Pardon me?

6 Q Have you read any caselaw?

7 A Yes. A long time ago.

8 Q How long?

9 A Well, I completed a forensic tract in my predoctoral
10 program. And occasionally -- and we visited caselaw at that
11 point, we had seminars. And I also periodically attend the
12 forensic seminar that's conducted weekly with our
13 predoctoral interns, but I don't claim to be a legal expert.

14 Q And you also testified on cross that Butner conducted a
15 complete medical workup?

16 A Yes, I believe they did a pretty comprehensive job.

17 Q And that included at least one MRI?

18 A Yes.

19 Q I'm showing you Defense Exhibit H.

20 A I'm thinking two MRI's actually.

21 Q Showing you Defense Exhibit H, which is a report from
22 December 20th, 2012 by Dr. Volin, and it notes Mr. Bumagin's
23 MRI shows atrophy is also consistent with Alzheimer's
24 disease, correct?

25 A Yes.

J. GRANT - RECROSS/MR. TROWEL

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1 Q And that was part of the medical workup, correct?

2 A That was a piece of it, yes.

3 Q And finally, you mentioned that in order to orient
4 Mr. Bumagin to his cell, you placed a reindeer on his door,
5 correct, or somebody did?

6 A Somebody did.

7 Q Are you aware that Mr. Bumagin is Jewish?

8 A Yes.

9 MS. DOLAN: Nothing further.

10 THE COURT: Your witness.

11 MR. TROWEL: Your Honor, one brief question, your
12 Honor.

13 RECROSS-EXAMINATION

14 BY MR. TROWEL:

15 Q Dr. Grant, in your expert opinion, could somebody who
16 has an MRI that's consistent with Alzheimer's disease
17 nevertheless be found competent?

18 A Yes.

19 MR. TROWEL: Nothing further.

20 THE COURT: Your witness.

21 MS. DOLAN: Nothing further for this witness.

22 THE COURT: Doctor, please step down.

23 (Witness leaves the witness stand.)

24 THE COURT: Next witness?

25 MR. TROWEL: Your Honor, my next witness was

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1 Dr. Monica Rivera Mindt, who -- the schedule for 5:00 when
2 the hearing was initially set forth. As I mentioned, she
3 has a family issue, so she had to leave at 5:00. I'm ready
4 to resume tomorrow.

5 THE COURT: Is that acceptable to the government?

6 MR. TROWEL: It can be. The Government is also
7 prepared to call a witness if your Honor would like to
8 proceed.

9 THE COURT: Well, since it's 5:30 and since we're
10 on the defense case, why don't we adjourn until tomorrow
11 morning.

12 What time do we start tomorrow, Mr. Jackson?

13 COURTROOM DEPUTY: 1:30, Judge.

14 THE COURT: 1:30. So we'll start promptly at 1:30
15 and we'll take it from there.

16 Do I need to sign any orders to make sure that
17 we're all here tomorrow or is that going to be an issue?

18 MR. TROWEL: Your initial order, your Honor,
19 covered both today and tomorrow.

20 THE COURT: I'm assuming if we go past tomorrow,
21 that I'll just to have to sign another order so we can move
22 smoothly along.

23 I would hate to think we're going to go past
24 tomorrow, but then, I don't go by the hour anymore, so it's
25 okay with me if we go past tomorrow.

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1 MR. TROWEL: Your Honor, I think you set aside an
2 hour tomorrow.

3 THE COURT: We can go as late as we need to go
4 tomorrow.

5 MR. TROWEL: Great.

6 THE COURT: How late do we need to go tomorrow?

7 MS. DOLAN: I'd like to complete my direct in five
8 minutes, if possible. Although, I may have to ask some more
9 questions, my direct examinations have been at least ten
10 minutes, if not half of Mr. Trowel's cross.

11 THE COURT: So far.

12 MS. DOLAN: So far.

13 MR. TROWEL: The government would anticipate
14 calling I think two witnesses tomorrow, who are also on the
15 evaluation team at Butner.

16 THE COURT: All in, how long do you think the
17 government case will take tomorrow and how long do you think
18 the defense case will take. I won't hold you to it, I just
19 want approximations.

20 MR. TROWEL: I think the Government will probably
21 finish its direct in --

22 THE COURT: Just, how many hours.

23 MR. TROWEL: 90 minutes probably.

24 THE COURT: 90 minutes. How long do you think
25 your case will take?

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1 MS. DOLAN: Direct, between five and 30, and then
2 I really don't know.

3 MR. TROWEL: I think my cross of defense's
4 witnesses, I don't know if -- even know if it's 30 minutes.

5 THE COURT: In other words, see you tomorrow at
6 1:30.

7 MR. TROWEL: Thank you, your Honor.

8 MS. DOLAN: Thank you.

9 (Proceedings adjourned at 5:33 p.m.)

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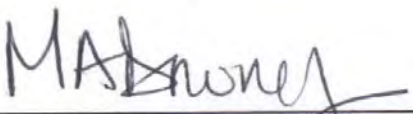
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CERTIFICATION

I certify that the foregoing is a correct transcript from the
record of proceedings in the above-entitled matter.



Official Court Reporter

Mary Agnes Drury, RPR
Official Court Reporter

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